

**Compliance With Regulations Restricting the  
Use of Records of Tax Enforcement Results  
Shows Improvement**

**September 2002**

**Reference Number: 2002-40-163**

**This report has cleared the Treasury Inspector General for Tax Administration disclosure review process and information determined to be restricted from public release has been redacted from this document.**



DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C. 20220

INSPECTOR GENERAL  
for TAX  
ADMINISTRATION

September 11, 2002

MEMORANDUM FOR COMMISSIONER ROSSOTTI

A handwritten signature in cursive script, reading "Pamela J. Gardiner".

FROM: Pamela J. Gardiner  
Acting Inspector General

SUBJECT: Final Audit Report - Compliance With Regulations Restricting the  
Use of Records of Tax Enforcement Results Shows  
Improvement (Audit # 200240004)

This report presents the results of our review to determine if the Internal Revenue Service (IRS) complied with legal guidelines set forth in the IRS Restructuring and Reform Act of 1998 (RRA 98) Section (§) 1204.<sup>1</sup>

RRA 98 § 1204 (a) prohibits the IRS from using a record of tax enforcement results (ROTTER) to evaluate employees or to impose or suggest production quotas or goals. Section (§) 1204 (b) requires that employees be evaluated using the fair and equitable treatment of taxpayers as a performance standard. Section 1204 (c) requires each appropriate supervisor to certify quarterly whether tax enforcement results were used in a prohibited manner. The Treasury Inspector General for Tax Administration (TIGTA) is required under 26 U.S.C. § 7803 (d)(1)(A)(i) (1999) to annually evaluate the IRS' compliance with the provisions of RRA 98 § 1204.

In summary, a review of 200 statistically sampled employees' performance and related supervisory documentation prepared between October 1, 2000, and September 30, 2001, showed that the IRS is not yet in compliance with RRA 98 § 1204, although there was some improvement since the previous TIGTA review.<sup>2</sup> No instances of potential violations of the use of ROTERs were found. However, in 22 of the 200 (11 percent) employees performance evaluations reviewed, documentation to support that employees were evaluated on the fair and equitable treatment of taxpayers was missing. The IRS has incorporated this standard into one performance evaluation document for all employees and that should greatly reduce these potential violations and improve compliance with § 1204 (b). We were unable to determine if the IRS

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<sup>1</sup> Pub. L. No. 105-206, 112 Stat. 685 (codified as amended in scattered sections of 2 U.S.C., 5 U.S.C., 5 U.S.C. app., 16 U.S.C., 19 U.S.C., 22 U.S.C., 23 U.S.C., 26 U.S.C., 31 U.S.C., 38 U.S.C., and 49 U.S.C.).

was in compliance with § 1204 (c) because of IRS and TIGTA resource limitations. However, limited tests of the 58 appropriate supervisors responsible for the 200 sampled employees indicated the quarterly certifications were properly submitted.

Management's Response: The IRS agreed with our findings in the report. The IRS indicated that it will implement enhancements to the Fiscal Year 2003 § 1204 program. Specifically, it will use a spreadsheet application to identify all § 1204 managers and supervisors who complete quarterly certifications. The annual independent review process will also be centralized into a single IRS-wide review. The IRS internal guidelines will also contain other certification enhancements. The IRS agreed with the estimated outcome related to the use of the fair and equitable treatment standard when evaluating § 1204 employees.

Management's complete response to the draft report is included as Appendix VI.

Copies of this report are also being sent to the IRS managers who are affected by the report finding. Please contact me at (202) 622-6510 if you have questions or Michael R. Phillips, Assistant Inspector General for Audit (Wage and Investment Income Programs), at (202) 927-0597.

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<sup>2</sup> *Compliance With the Internal Revenue Service Restructuring and Reform Act of 1998 Section 1204 Has Not Yet Been Achieved* (Reference Number 2001-10-178, dated September 2001).

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### Background

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On July 22, 1998, the President signed the Internal Revenue Service (IRS) Restructuring and Reform Act of 1998 (RRA 98) into law.<sup>1</sup> Among many other requirements contained in the law, Section (§) 1204 restricts the use of enforcement statistics. Specifically, RRA 98 § 1204 (a) prohibits the IRS from using a record of tax enforcement results (ROTTER) to evaluate employees or to impose or suggest production quotas or goals.

The IRS defines ROTERs as data, statistics, compilations of information, or other numerical or quantitative recordations of the tax enforcement results reached in one or more cases. ROTERs do not include the tax enforcement results of individual cases when used to determine whether an employee exercised appropriate judgment in pursuing enforcement of the tax laws based upon a review of the employee's work on that individual case. Examples of ROTERs include information such as the amount of dollars collected or assessed, the number of fraud referrals, and the number of seizures conducted.

RRA 98 § 1204 (b) requires that employees be evaluated using the fair and equitable treatment of taxpayers as a performance standard.

The IRS requires that employees administer the tax laws fairly and equitably; protect all taxpayers' rights; and treat each taxpayer ethically with honesty, integrity, and respect. This provision of the law was enacted to provide assurance that employee performance is focused on providing quality service to taxpayers instead of achieving enforcement results.

RRA 98 § 1204 (c) requires each appropriate supervisor to certify quarterly whether tax enforcement results were used in a prohibited manner.

The IRS defines an appropriate supervisor as the highest-ranking executive in a distinct organizational unit that supervises directly or indirectly one or more § 1204

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<sup>1</sup> Pub. L. No. 105-206, 112 Stat. 685 (codified as amended in scattered sections of 2 U.S.C., 5 U.S.C., 5 U.S.C. app., 16 U.S.C., 19 U.S.C., 22 U.S.C., 23 U.S.C., 26 U.S.C., 31 U.S.C., 38 U.S.C., and 49 U.S.C.).

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employees.<sup>2</sup> IRS procedures require that, beginning with first-line managers of § 1204 employees, each level of management self-certify that they have not used ROTERs in a manner prohibited by RRA 98 § 1204 (a). The total cumulative number of violations is to be reported by all subordinate managers up through the appropriate supervisor for each organizational unit. The appropriate supervisor is to then prepare a consolidated office certification covering the entire organizational unit.

The 26 U.S.C. § 7803 (d)(1)(A)(i) (1999) requires the Treasury Inspector General for Tax Administration (TIGTA) to determine annually whether the IRS is in compliance with restrictions on the use of enforcement statistics. The TIGTA previously evaluated the IRS' compliance with RRA 98 § 1204 provisions in Fiscal Years (FY) 1999 through 2001 and reported the following:

- In FY 1999, the IRS had controls in place to identify and report violations; however, there were still instances when ROTERs were used to evaluate employees or to impose or suggest production quotas or goals.<sup>3</sup>
- In FYs 2000 and 2001, most employee evaluations and management documents did not contain tax enforcement results and did not impose production quotas and goals.<sup>4</sup> However, employees were not always provided with or evaluated on the performance standard requiring the fair and equitable treatment of taxpayers.

The TIGTA FY 2000 report recommended that the IRS incorporate the performance standard of fair and equitable treatment of taxpayers into the evaluation forms of all

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<sup>2</sup> An enforcement employee (§ 1204 employee) is one who exercises judgment in recommending or determining whether or how the IRS should pursue enforcement of the tax laws.

<sup>3</sup> *The Internal Revenue Service Should Continue Its Efforts to Achieve Full Compliance with Restrictions on the Use of Enforcement Statistics* (Reference Number 1999-10-073, dated September 1999).

<sup>4</sup> *Further Improvements Are Needed in Processes That Control and Report Misuse of Enforcement Statistics* (Reference Number 2000-10-118, dated September 2000) and *Compliance With the Internal Revenue Service Restructuring and Reform Act of 1998 Section 1204 Has Not Yet Been Achieved* (Reference Number 2001-10-178, dated September 2001).

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employees to ensure they were evaluated on the standard. This corrective action was scheduled for implementation by October 1, 2001. While the corrective action taken should reduce the number of recurrences of this type of potential violation, it was not implemented in time to affect the results of this review, which encompassed employee performance results from October 1, 2000, through September 30, 2001.

This audit was performed between October 2001 and June 2002. The review included testing in the Organizational Performance Division in the IRS National Headquarters; the Wage and Investment, Small Business/Self-Employed, Large and Mid-Size Business, Tax Exempt and Government Entities, and Criminal Investigations Divisions; the National Taxpayer Advocate; and Appeals. The review included visits to IRS offices located in Fresno and Laguna Niguel, California; Plantation and Tampa, Florida; Chicago, Illinois; Indianapolis, Indiana; Overland Park, Kansas; Springfield, Massachusetts; Holtsville, New York; and Philadelphia, Pennsylvania. This audit was conducted in accordance with *Government Auditing Standards* with the following scope limitations.

Because the IRS does not have a systemic way to identify which employees have enforcement-related responsibilities, and since an employee's duties may change regularly, there is no way of identifying the total number of employees engaged in enforcement activities. To select a statistically valid sample, the TIGTA identified a potential enforcement employee population.<sup>5</sup> Neither the IRS nor the TIGTA can ensure that all enforcement employees were identified. In addition, our sampling methodology prevented us from fully testing the IRS' compliance with RRA 98 § 1204 (c).

Detailed information on our audit objective, scope, and methodology is presented in Appendix I. Major contributors to the report are listed in Appendix II.

A review of 200 statistically sampled enforcement employees' performance and related supervisory documentation prepared between October 1, 2000, and

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**Full Compliance With the Law  
Has Not Yet Been Achieved**

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<sup>5</sup> See Appendix V for detailed information on the sampling plan.

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September 30, 2001, revealed no instances of the use of ROTERs, production quotas, or goals to evaluate employee performance. Although there was a higher instance than last year of missing documentation in regard to the evaluation of employees on the fair and equitable treatment of taxpayers, new evaluation forms required as of October 1, 2001, should greatly reduce or eliminate the recurrence of these potential violations.

### **Records of enforcement results were not used in performance evaluations**

A review of performance and related supervisory files prepared between October 1, 2000, and September 30, 2001, for a statistical sample of 200 enforcement employees revealed that no ROTERs were used in evaluating performance. There was also no indication that ROTERs were used to impose or suggest production quotas or goals.

Although no ROTER violations were identified in the sample, there were four performance evaluations that contained language that could be misinterpreted by employees as possible goals or quotas. For example, one manager wrote in an employee's evaluation that significant publicity was generated as a result of the indictments in all cases the employee worked. In other instances, managers wrote that employees' actions led to the seizure of substantial assets and to the determination that the taxpayer had underreported a certain amount of income. The amount underreported could be calculated from information contained in the performance evaluation.

IRS guidelines list the number of indictments, publicity rate, dollar value of seized items, and dollars evaded from tax as examples of ROTERs. Even though specific numbers were not mentioned in most of the above examples, these details could foster the impression that "results" are the over-riding factor to receive a positive evaluation.

### **Managers could not always substantiate that employees were evaluated on the fair and equitable treatment of taxpayers**

A review of performance files for 200 sampled employees showed that 22 files (11 percent) did not include evidence that the employee was evaluated on the fair and equitable



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treatment of taxpayers. Because of manager error, the files did not contain the document used to evaluate the employee on this standard. We estimate that similar potential violations could affect an estimated 4,534 enforcement employees ( $\pm 4.9$  percent).

The IRS conducts an independent review of its procedures related to compliance with § 1204. The IRS can detect and correct potential § 1204 violations through the independent review process and, thus, improve its compliance with the law. An analysis of the results of the IRS' FY 2001 independent reviews showed that its managers could not always substantiate the use of the fair and equitable treatment of taxpayers standard.

During the audit period, the IRS used a separate document for most employees when evaluating the employee's treatment of taxpayers. Use of a separate document allowed managers to overlook completing the document or to misplace it once completed. As of October 1, 2001, the taxpayer treatment performance standard was incorporated into the performance evaluation document for all employees. This should help ensure that all employees are evaluated on the taxpayer treatment performance standard and should greatly reduce or eliminate the recurrence of these potential violations.

### **Limited tests indicated quarterly certifications were complete**

Though we were unable to determine if the IRS was in compliance with § 1204 (c), a limited test of the certifications submitted by the 58 appropriate supervisors responsible for the 200 sampled employees showed that the certifications for all 4 quarters were completed appropriately. The IRS designated executive level managers to serve as appropriate supervisors at various times during FY 2001 for the purpose of certifying that no § 1204 violations had occurred during the applicable time period. These executive level managers include the highest-level manager in IRS offices, for example the Deputy Commissioner, the National Taxpayer Advocate, or the Chief of Appeals.

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The TIGTA planned to review the supporting self-certifications for each of the managers for a statistical sample of 200 employees. The IRS does not have a system to effectively or efficiently identify and locate the various levels of supervisor certifications or those specifically relating to a specific employee. Neither the IRS nor the TIGTA had the resources to locate those certifications within the time periods of this audit. Therefore, we limited the analysis of the certification process to the certifications of the highest-level managers (the appropriate supervisors) for the employees in our sample.

Management's Response: The IRS indicated it will implement enhancements to the FY 2003 § 1204 program. Specifically, it will use a spreadsheet application to identify all § 1204 managers and supervisors who complete quarterly certifications. The annual independent review process will also be centralized into a single IRS-wide review. The IRS internal guidelines will also contain other certification enhancements. The IRS agreed with the estimated outcome related to the use of the fair and equitable treatment standard when evaluating § 1204 employees.

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### Appendix I

#### Detailed Objective, Scope, and Methodology

The overall objective of this review was to determine if the Internal Revenue Service (IRS) complied with legal guidelines set forth in the IRS Restructuring and Reform Act of 1998 (RRA 98) Section (§) 1204.<sup>1</sup>

We conducted the following tests to accomplish the objective:

- I. To identify current national and local office procedures and guidelines for achieving compliance with RRA 98 § 1204, we:
  - A. Interviewed IRS management and reviewed § 1204 guidance to identify the procedures used to ensure compliance with the law.
  - B. Reviewed the RRA 98, Internal Revenue Code, Internal Revenue Manual (IRM), IRS memos, and other documentation to identify the procedures used to ensure compliance with RRA 98 § 1204.
  - C. Identified any new or revised balanced measures performance criteria developed by the IRS since the Fiscal Year (FY) 2001 Treasury Inspector General for Tax Administration (TIGTA) review of enforcement statistics<sup>2</sup> by reviewing the IRS Intranet site, IRM revisions, and budget request/justification information.
  - D. Developed a listing of § 1204 enforcement employee job series by obtaining input from IRS management and identifying additional enforcement employee job series.
  - E. Reviewed previous TIGTA Counsel discussions related to the determination of records of tax enforcement results (ROTERTs) in violation of § 1204.
- II. To determine if the IRS complied with provisions of RRA 98 § 1204, we reviewed a sample of enforcement employee performance evaluations, Employee Performance Files (EPF), drop files, performance plans, organizational read files, and any other pertinent documentation. If the IRS was not in compliance, we determined the number of enforcement employees that could be affected. To determine the above, we:
  - A. Selected a statistically valid sample of 200 enforcement employees for review and identified the immediate supervisor/manager and business unit for the employees in the sample. (See Appendix V for details on how the population of potential

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<sup>1</sup> Pub. L. No. 105-206, 112 Stat. 685 (codified as amended in scattered sections of 2 U.S.C., 5 U.S.C., 5 U.S.C. app., 16 U.S.C., 19 U.S.C., 22 U.S.C., 23 U.S.C., 26 U.S.C., 31 U.S.C., 38 U.S.C., and 49 U.S.C.).

<sup>2</sup> *Compliance With the Internal Revenue Service Restructuring and Reform Act of 1998 Section 1204 Has Not Yet Been Achieved* (Reference Number 2001-10-178, dated September 2001).

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enforcement employees was identified and how the statistical sample was selected.)

- B. Provided the 1204 Coordinators the listing of employees in our sample to obtain the EPFs and drop files for each enforcement employee in the sample.
  - C. Reviewed available management files and the employee files obtained for enforcement employees in the sample to determine if ROTERS were used in evaluating the employees or to impose production goals or quotas. Also, we determined if the fair and equitable treatment of taxpayers was used as one of the standards for evaluating employees' performance. We also interviewed the applicable employee' manager to determine why potential exceptions occurred.
  - D. Reviewed the 58 appropriate level supervisors' quarterly certifications for the employees represented in our sample to determine whether the IRS had certified its compliance with RRA 98 § 1204 (c).
  - E. Projected the results from the sample reviewed to the nationwide population of enforcement employees with the assistance of an expert statistician. (See Appendix IV for details on how the projection was calculated.)
- III. To evaluate the effectiveness of the IRS' independent reviews for § 1204 violations, we reviewed the IRS procedures for conducting the independent review. We obtained and reviewed copies of the independent review results for the managers for the sampled employees and determined if the IRS' conclusion was similar to our review results.

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**Appendix II**

**Major Contributors to This Report**

Michael R. Phillips, Assistant Inspector General for Audit (Wage and Investment Income Programs)

Augusta R. Cook, Director

Kerry R. Kilpatrick, Director

Deann L. Baiza, Audit Manager

James E. Adkisson, Senior Auditor

Linda L. Bryant, Senior Auditor

Doris J. Hynes, Senior Auditor

Sharla J. Robinson, Senior Auditor

James M. Traynor, Senior Auditor

Karen C. Fulte, Auditor

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**Appendix III**

**Report Distribution List**

Assistant Deputy Commissioner N:ADC  
Commissioner, Large and Mid-Size Business Division LM  
Commissioner, Small Business/Self-Employed Division S  
Commissioner, Tax Exempt and Government Entities Division T  
Commissioner, Wage and Investment Division W  
Chief, Appeals AP  
Chief, Criminal Investigation CI  
Chief Financial Officer N:CFO  
Director, Strategy and Finance W:S  
Director, Tax Administration Coordination N:ADC:T  
Chief Counsel CC  
National Taxpayer Advocate TA  
Director, Legislative Affairs CL:LA  
Director, Office of Program Evaluation and Risk Analysis N:ADC:R:O  
Office of Management Controls N:CFO:F:M

Liaisons:

Assistant Deputy Commissioner N:ADC  
Commissioner, Large and Mid-Size Business Division LM  
Commissioner, Small Business/Self-Employed Division S  
Commissioner, Tax Exempt and Government Entities Division T  
Commissioner, Wage and Investment Division W  
Chief, Appeals AP  
Chief, Criminal Investigation CI  
Chief, Customer Liaison S:COM  
Director, Tax Administration Coordination N:ADC:T  
National Taxpayer Advocate TA  
Chief Counsel CC

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### Appendix IV

#### Outcome Measures

This appendix presents detailed information on the measurable impact that our review results will have on tax administration. While no recommendations were made in this report, the Treasury Inspector General for Tax Administration (TIGTA) has made prior recommendations that would have affected its Fiscal Year (FY) 2001 review results. However, the Internal Revenue Service (IRS) did not implement the corrective action for the prior year recommendations until after the current year's audit period.

#### Type and Value of Outcome Measure:

- Taxpayer Rights – Potential; the performance documentation for an estimated 4,534 enforcement employees ( $\pm 4.9$  percent) could contain violations of the IRS Restructuring and Reform Act of 1998 (RRA 98)<sup>1</sup> Section (§) 1204 (b). We are 90 percent confident that the range of enforcement employees affected by similar occurrences is between 2,519 and 6,549 (see page 4).

#### Methodology Used to Measure the Reported Benefit:

We obtained a computer download of Treasury Integrated Management Information System (TIMIS)<sup>2</sup> data for all IRS employees for the period September 23, 2001 through October 6, 2001. We were unable to validate the data; therefore we relied on the data obtained from TIMIS. We extracted from the TIMIS database a listing of 49,876 enforcement employees. See Appendix V for methodologies used to identify enforcement employees and to select a statistically valid sample.

We used a multi-stage probability proportional to size sampling technique that required sampling enforcement employees in 10 locations and reviewing the performance documentation of 20 employees in each location. We proposed a 90 percent Confidence Level, a 4 percent Precision Rate, and an 8 percent Occurrence Rate. Potential violations of RRA 98 § 1204 (b) were identified in 22 of the 200 sampled enforcement employees' performance documentation.

In order to project the results of our sample, we redefined the estimated population of enforcement employees. The elimination of 42 non-enforcement employees from the sample resulted in the revision of our estimated population of enforcement employees to 41,220 as of October 6, 2001, as follows:

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<sup>1</sup> Pub. L. No. 105-206, 112 Stat. 685 (codified as amended in scattered sections of 2 U.S.C., 5 U.S.C., 5 U.S.C. app., 16 U.S.C., 19 U.S.C., 22 U.S.C., 23 U.S.C., 26 U.S.C., 31 U.S.C., 38 U.S.C., and 49 U.S.C.).

<sup>2</sup> The TIMIS is a system that supports payroll and personnel processing and reporting requirements.

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- $42 \text{ (enforcement employees removed from sample)} / 242 \text{ (total employees reviewed)} = .17355372 \text{ (non-enforcement employee revision factor).}$
- $.17355372 \text{ (non-enforcement employee revision factor)} * 49,876 \text{ (estimated population of enforcement employees)} = 8,656 \text{ (estimated number of non-enforcement employees).}$
- $49,876 \text{ (estimated population of enforcement employees)} - 8,656 \text{ (estimated number of non-enforcement employees)} = 41,220 \text{ (revised estimate of population of enforcement employees).}$

We projected our results across the revised estimate of the population of 41,220 enforcement employees. According to the projection, the performance documentation for an estimated 4,534 enforcement employees ( $\pm 4.9$  percent) could contain violations of RRA 98 § 1204 (b). We are 90 percent confident that the range of enforcement employees affected by similar occurrences is between 2,519 and 6,549. This is based on a .04888304 precision rate.

- $22 \text{ (number of potential violations identified)} / 200 \text{ (number of enforcement employees in the sample)} * 41,220 \text{ (revised population of enforcement employees)} = 4,534 \text{ (projected number of potential violations)}$
- $41,220 \text{ (revised population of enforcement employees)} * .04888304 \text{ (precision rate)} = 2,015 \text{ (precision of the projection).}$
- $4,534 \text{ (projected number of potential violations)} - 2,015 \text{ (precision of the projection)} = 2,519 \text{ (lower confidence limit).}$
- $4,534 \text{ (projected number of potential violations)} + 2,015 \text{ (precision of the projection)} = 6,549 \text{ (higher confidence limit).}$

A professional statistician reviewed the sampling methodology and the projections



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### Appendix V

#### Sampling Methodology

Because the Internal Revenue Service (IRS) has no systemic way to identify which employees have enforcement-related responsibilities, and since an employee's duties may change regularly, there is no way of knowing at any given time the total number of employees engaged in enforcement activities. In order to conduct the audit, it was necessary for the Treasury Inspector General for Tax Administration (TIGTA) to identify a potential enforcement employee population from which to select a sample. We obtained a computer download of the Treasury Integrated Management Information System (TIMIS)<sup>1</sup> data for all IRS employees for the period September 23, 2001, through October 6, 2001. We were unable to validate the data; therefore we relied on the data obtained from the TIMIS. Although the TIGTA selected a statistically valid random sample from a population of potential enforcement employees, neither the IRS nor the TIGTA can ensure that all enforcement employees were identified.

We used a multi-stage probability proportional to size sampling technique that required sampling enforcement employees in 10 locations and reviewing the performance documentation of 20 employees in each location. We proposed a 90 percent Confidence Level, a 4 percent Precision Rate, and an 8 percent Occurrence Rate. An expert contract statistician provided the sampling technique and formulas. Because there was no precise way to identify the enforcement employee population, we selected a sample of 40 employees in each of 10 locations so that non-enforcement employees could be eliminated from the sample and replaced with another enforcement employee.

To create the population of enforcement employees, we extracted from the TIMIS database a listing of 49,876 enforcement employees based on the following criteria:

- Work location in the 48 continental United States, with the following exceptions:
  - Employees in functional areas that received a waiver from the IRS Commissioner because the function did not have duties covered by the IRS Restructuring and Reform Act of 1998 (RRA 98)<sup>2</sup> Section (§) 1204.
  - Employees whose location was the World Trade Center #6 in New York because of the destruction of records at that location as a result of the terrorist attack on September 11, 2001. Employees in Utah were also removed from the sample due to the logistics problems associated with the 2002 Winter Olympics.

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<sup>1</sup> The TIMIS is a system that supports payroll and personnel processing and reporting requirements.

<sup>2</sup> Pub. L. No. 105-206, 112 Stat. 685 (codified as amended in scattered sections of 2 U.S.C., 5 U.S.C., 5 U.S.C. app., 16 U.S.C., 19 U.S.C., 22 U.S.C., 23 U.S.C., 26 U.S.C., 31 U.S.C., 38 U.S.C., and 49 U.S.C.).

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- Specific job series: 110, 301, 340, 343, 501, 503, 512, 526, 592, 598, 905, 920, 930, 950, 962, 986, 987, 1101, 1169, 1171, 1510, 1801, 1802 and 1811.
- After selection based on the above 2 criteria, locations with fewer than 40 employees were removed from the population because we needed a sample of 40 employees from each location.

We used a statistical sampling computer program to randomly select 10 numbers that corresponded to specific enforcement employees in the population (stage 1 of the multi-stage sampling technique). The work locations of those 10 employees became the 10 audit locations from which the 40 employees would be sampled. The selection of the audit locations was weighted based on the estimated population of enforcement employees in a location. Therefore, the larger the population of enforcement employees in a location, the greater the opportunity that the location would be selected. In addition, it was possible for a location to be selected multiple times; however, multiple selections did not occur. The audit locations randomly selected were Fresno, CA; Laguna Niguel, CA; Plantation, FL; Tampa, FL; Chicago, IL; Indianapolis, IN; Overland Park, KS; Springfield, MA; Holtsville, NY; and Philadelphia, PA.

We then used the statistical sampling computer program to select 40 random numbers for each of the 10 audit locations (stage 2 of the multi-stage sampling technique). The 40 random numbers corresponded to specific enforcement employees in that location population.

From the listing of 40 employees for each location, we reviewed the Fiscal Year (FY) 2001 performance and supervisory documentation for the first 20 enforcement employees. We reviewed the selected employees' performance documentation for compliance with the requirements of RRA 98 § 1204. We evaluated documentation for 242 employees and determined that 42 of these employees did not perform enforcement activities in FY 2001. When a non-enforcement employee was identified, he or she was replaced with the next employee in the listing for each location. This allowed us to ensure a sample of 20 enforcement employees was reviewed in each location, for a total review sample of 200.

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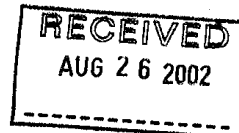
Appendix VI

### Management's Response to the Draft Report



CHIEF FINANCIAL OFFICER

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224



August 26, 2002

MEMORANDUM FOR TREASURY INSPECTOR GENERAL FOR TAX  
ADMINISTRATION

FROM:

*for Eileen T. Bassell*  
W. Todd Grams  
Chief Financial Officer

SUBJECT:

Compliance With Regulations Restricting the  
Use of Records of Tax Enforcement Results Shows  
Improvement (Audit # 200240004)

I am responding to your draft report titled "Compliance With Regulations Restricting the Use of Records of Tax Enforcement Results Shows Improvement." The draft report reviews our compliance with the IRS Restructuring and Reform Act of 1998 (RRA 98) § 1204 requirements. Specifically, § 1204 restricts the use of enforcement statistics to evaluate IRS employees or to impose or suggest production quotas or goals. It also requires the IRS to evaluate employees using the fair and equitable treatment of taxpayers as a performance standard and that appropriate supervisors certify quarterly on the use of tax enforcement results. The IRS's goal is to achieve full compliance with the RRA 98 § 1204. I am pleased your review identified our improvement in compliance.

Although you identified no Record of Tax Enforcement Results (ROTTER) violations, please give us copies of the performance evaluations that contained language employees could misinterpret as possible goals or quotas. We will contact the appropriate offices to ensure managers and employees understand the appropriate use of tax enforcement statistics. Because you issued the draft report before we could respond to the discussion draft, I have attached comments and clarifications on information in the report.

Based on the IRS's goal for continuous improvement and discussions with TIGTA staff throughout the year, the IRS will implement enhancements for the FY 2003 § 1204 program. Specifically, the IRS will use a spreadsheet application to identify all § 1204 managers and executives who complete § 1204 quarterly certifications. This data will capture the § 1204 manager universe, which will support the IRS and the TIGTA by identifying specific enforcement populations in the future. The IRS will also centralize the annual § 1204 independent review process into a single Servicewide review to:

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- Reduce the resource burden on § 1204 organizations
- Provide consistent review procedures Servicewide
- Ensure an expeditious completion of the review

These enhancements will allow us to more accurately assess the effectiveness of the § 1204 quarterly certification process.

We will issue other certification enhancements in the IRM 1.5, Organization, Finance, and Management, Managing Statistics in a Balanced Measurement System Handbook, for FY 2003. These efforts will continue to improve our implementation of § 1204 requirements.

We recognize the report's estimate of the enforcement employees evaluated between October 1, 2000, and September 30, 2001, who may not have been evaluated on the fair and equitable treatment of taxpayers performance standard. We accept the described benefit. We have taken corrective action to respond to the prior recommendations, which will correct this potential deficiency of the FY 2001 review.

The information in this draft report does not require protection under the Freedom of Information Act and other applicable laws.

If you have any questions, please contact me at 202.622.6400, or Phil Mahler, Acting Director, Organizational Performance Division, at 202.622.4909.

Attachment

## Compliance With Regulations Restricting the Use of Records of Tax Enforcement Results Shows Improvement

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Attachment

### Specific Comments and Clarifications TIGTA Draft Audit Report No. 200240004

#### *Managers Could Not Always Substantiate that Employees Were Evaluated on the Fair and Equitable Treatment of Taxpayers.*

In this report section, the last sentence in paragraph two would be more accurately stated as: "An analysis of the results of the IRS' FY 2001 independent reviews showed that its managers could not always substantiate the use of the fair and equitable treatment of taxpayers standard." As shown in the report, the greater percentage of managers did evaluate employees on the fair and equitable treatment of taxpayers.

Regarding Section 1204 (b), the Office of Strategic Human Resources agrees that incorporating the taxpayer treatment performance standard in the performance evaluation documents for all employees should ensure greater compliance. The IRS launched a major communications initiative in July 2001 to support compliance with Section 1204 (b). This included establishing the Critical Job Element Resource Center website, which provides management guidance on the retention standard. We designed Form 6774 to require an employee's signature to indicate receipt of the retention standard. The performance evaluation document includes management and executive acknowledgement. With these enhancements and continued focus on the fair and equitable treatment of taxpayers, we are confident we will overcome deficiencies inherent in the former evaluation process.

#### *Limited Tests Indicated Quarterly Certifications Were Complete.*

In this report section, the last paragraph indicates that: "The IRS does not have a system to effectively or efficiently identify and locate the various levels of supervisor certifications or those specifically relating to a specific employee. Neither the IRS nor the TIGTA had the resources to locate those certifications within the time periods of this audit." The TIGTA revised the request for certification data on April 9, 2002, with an expectation of an April 24, 2002 response date. We could not have provided the extensive certification documentation for all levels of management in this short timeframe. The TIGTA withdrew this request and accepted certification data for the Section 1204 Appropriate Supervisors as required by RRA 98.

#### *Information on Section 1204 Appropriate Supervisors Clarified.*

In FY 2001, 59 Section 1204 appropriate supervisors certified during the fourth quarter and conducted independent reviews instead of 58 as you reported.